IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

WP(C).No. 34503 of 2007(G)

PETITIONER:

M/S.SARASONS TRADERS,
KARUVANTHURUTHY ROAD,
KARUVANTHURUTHY P.O.,FEROKE,KOZHIKODE,
REPRESENTED BY MANAGING PARTNER,PRAKASAN.

BY ADV. SRI.N.MURALEEDHARAN NAIR
SRI.V.K.SHAMUSUDHEEN

RESPONDENT:

COMMERCIAL TAX OFFICER
IVTH CIRCLE, KOZHIKODE.

BY GOVERNMENT PLEADER SRI.GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON 27/11/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 34503 OF 2007 G
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Dated this the 27th day of November, 2007

J U D G M E N T

The prayer in this writ petition is to quash Ext.P5 and to direct the respondent to adjust the input tax refundable to the petitioner as per Exts. P1 and P2 towards the tax payable for April, 2007 by accepting Exts. P3 and P4 or in the alternative to refund the same based on Ext.P6 application.

2. Petitioner submits that for the month of March 2007, monthly return was filed with input tax credit of Rs.1,11,896.48 and without filing any application for refund, petitioner made a request along with the return for April, 2007 to adjust the refundable tax credit towards the output tax due for April 2007 and paid the balance due. Subsequently, the respondent issued Ext.P5 informing the petitioner that the return filed for April 2007 was defective for the reason that the petitioner had carried forward excess amount from the previous year to 2007-08 and that there is no provision in the Kerala Value Added Tax Act to carry over excess input tax from one financial year to other. On this basis, petitioner was directed to file a fresh return for the

balance tax and interest. Thereupon, the petitioner filed Ext.P6 application for refund of the input tax for March, 2007 and thereafter filed this writ petition with the prayers mentioned above.

3. The first issue to be considered is whether the stand taken by the respondent in Ext.P5 notice is legal. It is the admitted case that what was sought for by the petitioner was to adjust the refundable tax credit available for March 2007 towards its tax liability for April, 2007. In that process, the petitioner was attempting to adjust refundable amount during the last return period of the year 2006-07, towards the tax due for the year 2007-08. It is this request that is turned down by the respondent in Ext.P5, stating that there is no provision for carrying forward excess input tax beyond that year.

4. Adjustment of excess input tax can only be in terms of Section 11(6) of the KVAT Act and Proviso thereto is to the effect that where the excess input tax so carried forward cannot be fully adjusted during the last return period of that year, the excess input tax credit so remaining unadjusted shall be refunded to the

dealer as if it were a refund accrued under Section 13 of the Act. This proviso makes it clear that the course open to the petitioner was not to seek to carry forward the unadjusted excess input tax credit, but to have sought refund of the same. Therefore the respondent was right in declining the petitioner's request for adjustment by Ext.P5 and hence Ext.P5 has to be upheld and I do so. Once Ext.P5 has been upheld, there is no question of directing the respondent to adjust the input tax refundable towards the tax payable for April 2007 by accepting Exts. P3 and P4.

5. In view of the above, it is for the respondent to consider Ext.P6 application filed by the petitioner for refund of the tax and pass appropriate orders thereon.

Writ petition is disposed of in the above terms.

ANTONY DOMINIC, JUDGE.

Rp